

**FILED**

JUL 15 2008

OA 91 Criminal Complaint

**United States District Court**PICKERING WIEKING  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
CALIFORNIA

NORTHERN

DISTRICT OF

UNITED STATES OF AMERICA  
V.**CRIMINAL COMPLAINT**JOSE JAVIER MEJIA-GUTIERREZ,  
aka: Marcus Hernandez Ramirez,  
aka: Marco Espinoza Cardona.

Case Number:

4-08-70438

(Name and Address of Defendant)

**WDB**

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about June 30, 2008 in Alameda County, in the Northern District of California defendant(s) did.

(Track Statutory Language of Offense)

knowingly and voluntarily reenter and remain in the United States following deportation without having obtained the express consent of the Attorney General or the Secretary of the Department of Homeland Security

in violation of Title 8 United States Code, Section(s) 1326

I further state that I am a(n) Deportation Officer and that this complaint is based on the following facts:  
See attached affidavit.

NO BAIL ARREST WARRANT REQUESTED.

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ No

Approved

As To

Form: James C. Mann

AUSA

*James C. Mann* /TJH

Polly E. Kaiser, Deportation Officer

Name/Signature of Complainant

*Polly E. Kaiser*

Sworn to before me and subscribed in my presence,

July 15, 2008

Date

at San Francisco, California

City and State

Honorable Maria-Elena James

U.S. Magistrate Judge

Name &amp; Title of Judicial Officer

*[Signature]*  
Signature of Judicial Officer

## AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Polly E. Kaiser, being duly sworn, hereby state as follows:

### I. INTRODUCTION

1. I have been a Deportation Officer with the United States Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE"), formerly the United States Department of Justice, Immigration and Naturalization Service, for over five years. I am currently assigned under the Field Office Director, San Francisco, California in the Detention and Removal Operations division. I am presently attached to the Prosecutions Unit of the Criminal Alien Program, a group that is responsible for enforcing federal criminal statutes involving criminal aliens who reenter the United States illegally.

2. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint and arrest warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause to believe that on or about June 30, 2008, JOSE JAVIER MEJIA-GUTIERREZ (aka: Marcus Hernandez Ramirez; aka: Marco Espinoza Cardona) violated Title 8, United States Code, section 1326. The facts set forth in this Affidavit are based on my review of the official Immigration Service file (A97 337 088) of MEJIA-GUTIERREZ, my personal observations, my training and experience, and where noted, information related to me by other law enforcement officials.

### II. STATEMENT OF PROBABLE CAUSE

3. JOSE JAVIER MEJIA-GUTIERREZ is a native and citizen of Honduras, who last entered the United States illegally by crossing the international border with Mexico in or about April 2008 via Nogales, Arizona. MEJIA-GUTIERREZ knowingly remained in the United States without first having obtained the consent to reapply for admission from the Attorney General of the United States or the United States Secretary of the Department of Homeland Security.

4. The official Immigration Service file for MEJIA-GUTIERREZ contains three executed Warrants of Removal and two Verification of Removal forms. The Warrants of Removal are dated September 22, 2004, September 20, 2006 and July 10, 2007; MEJIA-GUTIERREZ was deported from the United States to Honduras on all three occasions. The Verification of Removal forms are dated May 9, 2005 and January 31, 2008; MEJIA-GUTIERREZ was removed from the United States to Honduras on both occasions.

5. On June 30, 2008, MEJIA-GUTIERREZ was released into the custody of ICE from Alameda County Jail.

6. Also, on June 30, 2008, Immigration Enforcement Agent Byoung Park interviewed MEJIA-GUTIERREZ at the Immigration and Customs Enforcement District Office in San

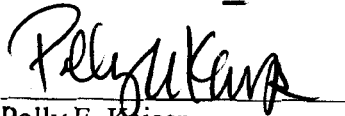
Francisco, California. After Agent Park advised MEJIA-GUTIERREZ of his Miranda rights and the right to speak with the consular or diplomatic officers of his country of citizenship, MEJIA-GUTIERREZ waived those rights and provided a sworn statement declaring that his true and correct name is JOSE JAVIER MEJIA-GUTIERREZ, that he was born in Honduras, and that he is a citizen of Honduras. He admitted that he had previously been removed from the United States, and that he entered the United States in April 2008 through Nogales, Arizona. He further admitted that he did not apply for or receive permission to reenter the United States after his last deportation.

7. On July 14, 2008, a full set of rolled fingerprints taken of MEJIA-GUTIERREZ were submitted to the Integrated Automated Fingerprint Identification System ("IAFIS") along with the prints appearing on each of the Warrants of Removal and Verification of Departure forms for MEJIA-GUTIERREZ. On the same day, the fingerprint examiner positively identified the fingerprints submitted as belonging to the same MEJIA-GUTIERREZ who was previously removed from the United States on four of the five occasions referenced in paragraph 4 above. IAFIS was unable to match the fingerprints from the September 22, 2004 Warrant of Removal because the fingerprints on that Warrant were not of the necessary quality.

8. There is no indication in the official files of the United States Immigration and Customs Enforcement that MEJIA-GUTIERREZ has applied for, or been granted, the requisite permission to reenter the United States from either the Attorney General of the United States or the Secretary of the Department of Homeland Security. Further, in his sworn statement (discussed in paragraph 6 above), MEJIA-GUTIERREZ admitted that he had not applied to the Department of Homeland Security for permission to reenter the United States after deportation.

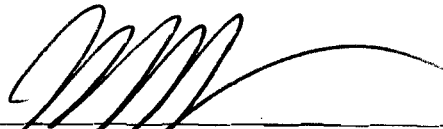
### III. CONCLUSION

9. On the basis of the above information, I submit that there is probable cause to believe that JOSE JAVIER MEJIA-GUTIERREZ, illegally reentered the United States following deportation, in violation of Title 8, United States Code, section 1326.



Polly E. Kaiser  
Deportation Officer, U.S. Department of Homeland  
Security  
U.S. Immigration and Customs Enforcement  
San Francisco, California

Subscribed and sworn to before me this 15 day of July 2008.



The Honorable Maria-Elena James  
United States Magistrate Judge  
Northern District of California  
San Francisco, California

AO 257 (Rev. 6/78)

**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**BY: ☒ COMPLAINT ☐ INFORMATION ☐ INDICTMENT  
☐ SUPERSEDING**OFFENSE CHARGED**

VIOLATION: 8 U.S.C. § 1326.

- ☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony

**PENALTY:**

Imprisonment: 20 years  
 Fine: \$250,000  
 Supervised release: 3 years  
 Special assessment: \$100

**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)  
 Immigration & Customs Enforcement

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW  
DOCKET NO.MAGISTRATE  
CASE NO.

Name and Office of Person  
 Furnishing Information on  
 THIS FORM

JOSEPH P. RUSSONIELLO

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y  
 (if assigned)

James C. Mann, AUSA

Name of District Court, and/or Judge/Magistrate Location  
 NORTHERN DISTRICT OF CALIFORNIA

**DEFENDANT - U.S.**

JOSE JAVIER MEJIA-GUTIERREZ

DISTRICT COURT NUMBER

**DEFENDANT****IS NOT IN CUSTODY**

- 1) ☐ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

**IS IN CUSTODY**

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☒ Awaiting trial on other charges } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of Institution

Has detainer  
 been filed? ☐ Yes ☐ No

} If "Yes"  
 give date  
 filed

DATE OF  
 ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

DATE TRANSFERRED  
 TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted

**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**

☐ SUMMONS ☐ NO PROCESS\* ☒ WARRANT Bail Amount: No bail.

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments: